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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/736,117 Confirmation No. : 3626
First Named : Brandel, Lennart J.
Inventor
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TC/A.U. : 1794
Examiner : Peter Y. Chol

Docket No. : 7343-1
Customer No. : 29602

Title : Patterned Glass Fiber Textile

APPEAL BRIEF

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This appeal is from the Office Action mailed June 19, 2009, rejecting claims 1, 3-4, 6-7, and 11, which are reproduced in the Claims Appendix of this brief.

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Serial No. 10/736,117
Attorney Docket No. 7343-1**I. REAL PARTY IN INTEREST**

Johns Manville International, Inc. is the real party in interest and the assignee of the present application.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants' legal representative nor the assignee know of any other appeal or interferences which will affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1, 3-4, 6-7, 11-15, 19, and 21 are pending. The final rejection of pending claims 1, 3-4, 6-7, and 11 is hereby appealed. Claims 12-15, 19, and 21 are withdrawn pursuant to a restriction requirement mailed August 30, 2005. Claims 2, 5, 8-10, 16-18, and 20 were previously canceled.

IV. STATUS OF AMENDMENTS

No claim amendments were filed subsequent to final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a woven, patterned glass fiber textile fabric comprised of a glass fiber yarn with a titer of from about 30 to 75 tex as the warp and a glass fiber yarn having a titer ranging from 190 to 350 tex as the weft.¹ The warp density of the fabric ranges from 2.5 to 5 threads/cm and the weft density ranges from 2.0 to 12 threads/cm.² The woven, patterned glass fiber textile fabric is formed from a Jacquard weaving process using a Jacquard loom.³ Each glass fiber yarn used as the warp and/or weft is a sliver or a texturized yarn.⁴

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3-4, 6-7, and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over EP 1162306 ("Drax5") in view of U.S. Patent No. 5,433,997 ("Land").

¹ See, for example, specification, page 2, lines 27-29 and page 3, lines 3-5.

² See, for example, specification, page 2, line 30-page 3, line 2 and page 3, line 6.

³ See, for example, specification, page 1, lines 7-9 and page 3, lines 8-9.

⁴ See, for example, specification, page 3, lines 13-15.

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VII. ARGUMENT

Claims 1, 3-4, 6-7, and 11 rejected as unpatentable over Draxø in view of Land.

As explained in the "Background of the Invention" section of the present application, a difficulty has been found in producing aesthetically pleasing glass fabrics, particularly glass fabrics which contain a pattern, and which can be efficiently prepared using a loom. (Page 1, Lines 12-18). For example, U.S. Patent No. 6,267,151, which describes a method for producing a patterned glass fabric, states that by adhering to the *specific limiting values of the glass fiber yarns* used, patterned glass fabrics can be produced. (Page 1, Lines 19-29). The importance of aesthetics in commercial products such as wall coverings requires A flexibility in creating patterns in woven glass textile fabrics. (Page 1, Line 30 – Page 2, Line 1). An inability to weave patterned glass fiber textiles on a Jacquard loom using a variety of glass fiber yarns becomes an obstacle to commercial acceptance. (Page 2, Lines 1-3).

Accordingly, the present invention produces a glass textile fabric which is aesthetically pleasing and has been prepared on a Jacquard loom. The presently claimed invention further provides a process for preparing a patterned glass fiber textile useful in wallcoverings which is able to be woven on a Jacquard loom using glass fiber yarns for the warp which are much smaller than have previously been employed.

Thus, independent claim 1 is directed to a woven, patterned glass fiber textile fabric comprised of a glass fiber yarn with a titer of from about 30 to 75 tex as the warp, and a glass fiber yarn having a titer ranging from 190 to 350 tex as the weft, wherein the warp density of the fabric ranges from 2.5 to 5 threads/cm and the weft density ranges from 2.0 to 12 threads/cm, wherein the woven, patterned glass fiber textile fabric is formed from a Jacquard weaving process using a Jacquard loom. Independent claim 1 further specifies that each glass fiber yarn used as the warp and/or weft is a sliver or a texturized yarn.

The primary reference, Draxø, provides a pre-glued glass fiber wallcovering and process for its formation. (Abstract). Draxø discloses,

Preferred yarns include, for the warp direction are continuous C-glass or E-glass of 9 to 10 microns, and 139 to 142 tex with approximately 315 to 340 ends per meter [*3.15 to 3.40 threads/cm*]. An alternative warp yarn is formed from continuous C-glass or E-glass of 6 to 9 microns, 34 to 68 tex with approximately 680 ends per meter [*6.80 threads/cm*].

For the weft direction, a preferred glass is discontinuous spun E-glass or C-glass, *8 to 11 microns*, and 165 to 550 tex with approximately 170 to 600

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ends per meter [*1.70 to 6.00 threads/cm*]. An alternative weft yarn includes continuous volumized E-glass or C-glass of 8 to 11 microns and 165 to 550 tex with approximately 170 to 600 ends per meter.

(Emphasis Added; Paragraphs [0018]-[0019]).

The Office Action acknowledges that Draxö fails to disclose forming a woven, patterned glass fiber textile fabric from a Jacquard weaving process using a Jacquard loom. Accordingly, the Office Action cites Land for disclosure that “it was known in the wallcovering art to form a fabric for use in wallcovering comprising textured glass woven yarns, wherein the fabric is woven into various styles include Jacquard, and woven using known looms.” (Page 5). Land discloses,

As examples of extremely fine glass filaments possessing the desired properties, it is noted that yarns consisting of continuous glass filaments having an average diameter of approximately 0.00015 inch [*3.81 microns*] are commercially available and are known as B (or Beta) filament yarns. Filaments having an average diameter of approximately 0.00018 inch [*4.57 microns*] are known as C filaments, and filaments having a diameter of approximately 0.00021 inch [*5.33 microns*] are known as D filaments. Commercial DE filaments have an average diameter of approximately 0.00025 inch [*6.35 microns*].

(Emphasis Added; Column 4, Lines 4-14). Land further discloses that “the weave can be warp ends per inch 26 ± 1 and filling picks per inch 17 (two ends up) and warp ends up per inch 26 ± 1 and filling picks per inch 17 (one end up).” (Column 5, Lines 46-49). Warp ends per inch 26 ± 1 corresponds to *10.2 \pm 0.4 threads/cm*, while filling picks per inch 17 (two ends up) corresponds to *13.4 threads/cm* and filling picks per inch 17 (one end up) corresponds to *6.7 threads/cm*. Land therefore discloses different yarns than the presently claimed woven, patterned glass fiber textile fabric comprised of a glass fiber yarn with a titer of from about 30 to 75 tex as the warp, and a glass fiber yarn having a titer ranging from 190 to 350 tex as the weft, wherein the warp density of the fabric ranges from 2.5 to 5 threads/cm and the weft density ranges from 2.0 to 12 threads/cm. Land also discloses much different yarns, much larger yarns than those disclosed in Draxö, the primary reference.

The Office appears to be picking and choosing the glass fiber yarn of Draxö and combining it with the Jacquard weaving process using a Jacquard loom as disclosed by Land in an attempt to arrive at the presently claimed woven, patterned glass fiber textile fabric. However, a reference must be viewed as a whole for what it teaches. “[I]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full

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appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 353 F.2d 238, 241, 147 U.S.P.Q. 391, 393 (C.C.P.A. 1965); *see also Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1383, 231 U.S.P.Q. 81, 93 (Fed. Cir. 1986). Specifically, the only disclosure in Land related to Jacquard weaving process using a Jacquard loom discloses glass fiber yarns for the warp *which are much larger* than those presently claimed.

While the Office Action asserts that Land is not relied on to teach glass yarn sizes and that Land does not require the individual filaments to have a specific diameter, Applicants respectfully submit that the results of combining Draxö and Land would *not* have been predictable, given the different glass yarns disclosed by each of Draxö and Land.

Further, a judgment on obviousness is proper if it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and must not include knowledge gleaned only from applicant's disclosure. *In re McLaughlin* 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971); MPEP § 2145.

As noted above, it is the presently claimed invention that overcomes the prior use of specific limiting values of glass fiber yarns in producing patterned glass fabrics on a Jacquard loom and provides a process for preparing a patterned glass fiber textile useful in wallcoverings which is able to be *woven on a Jacquard loom using glass fiber yarns for the warp which are much smaller than have previously been employed*. Specifically, as further noted above, the presently claimed woven, patterned glass fiber textile fabric is comprised of, *inter alia*, *a glass fiber yarn with a titer of from about 30 to 75 tex as the warp*, wherein the warp density of the fabric ranges from 2.5 to 5 threads/cm, wherein the woven, patterned glass fiber textile fabric is *formed from a Jacquard weaving process using a Jacquard loom*.

Again, Applicants respectfully submit that the proposed combination of Draxö and Land would *not* have provided a predictable result of the presently claimed woven, patterned glass fiber textile fabric comprised of a glass fiber yarn with a titer of from about 30 to 75 tex as the warp, and a glass fiber yarn having a titer ranging from 190 to 350 tex as the weft, wherein the warp density of the fabric ranges from 2.5 to 5 threads/cm and the weft density ranges from 2.0 to 12 threads/cm, wherein the woven, patterned glass fiber textile fabric is formed from a Jacquard weaving process using a Jacquard loom, wherein each glass fiber yarn used as the warp and/or weft is a sliver or a texturized yarn.

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For at least the above reasons, it is apparent that no *prima facie* case of obviousness has been established. Accordingly, Appellants respectfully request that the obviousness rejection of claims 1, 3-4, 6-7, and 11 over Draxö in view of Land be reversed.

VIII. CLAIMS APPENDIX

See the attached Claims Appendix for a copy of the claims involved in the appeal.

IX. EVIDENCE APPENDIX

See the attached Evidence Appendix.

X. RELATED PROCEEDINGS APPENDIX

See the attached Related Proceedings Appendix for copies of decisions identified in Section II., *supra*.

XI. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejection of Appellants' claims 1, 3-4, 6-7, and 11 is improper, and therefore, the ground of rejection should be reversed.

The Appeal Brief is being submitted with the required fee of \$540.00.

Respectfully submitted,

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Date: October 26, 2009

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CLAIMS APPENDIX**The Appealed Claims**

1. A woven, patterned glass fiber textile fabric comprised of a glass fiber yarn with a titer of from about 30 to 75 tex as the warp, and a glass fiber yarn having a titer ranging from 190 to 350 tex as the weft, wherein the warp density of the fabric ranges from 2.5 to 5 threads/cm and the weft density ranges from 2.0 to 12 threads/cm, wherein the woven, patterned glass fiber textile fabric is formed from a Jacquard weaving process using a Jacquard loom, wherein each glass fiber yarn used as the warp and/or weft is a sliver or a texturized yarn.

3. The glass textile fabric of claim 1, wherein the titer of the warp yarn is about 34 tex.

4. The glass textile fabric of claim 1, wherein the titer of the warp yarn is about 70 tex.

6. The glass textile fabric of claim 1, wherein the titer of the weft yarn is about 200 tex.

7. The glass textile fabric of claim 1, wherein the titer of the weft yarn is about 330 tex.

11. The glass textile fabric of claim 1, wherein the textile is impregnated with a chemical formulation comprised of a starch binder and a polymeric binder.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.